

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION**

**IN THE MATTER OF:
PITTSBURG COUNTY RURAL WATER
DISTRICT #20,
RESPONDENT,**

CASE NO. 19-010

**FACILITY NO. S-30603
PERMIT NO. OK0100625
PROBLEM(S): Permit schedule Violation(s);
Operation and Maintenance
Violation(s); and
Unpermitted Discharge(s)**

OKLAHOMA
DEPT. OF ENVIRONMENTAL QUALITY

MAR 21 2019

FILED BY: Olga
HEARING CLERK

CONSENT ORDER

The parties to this case, the Oklahoma Department of Environmental Quality ("DEQ") and Pittsburg County Rural Water District #20 ("Respondent") agree to this Consent Order in order to resolve certain environmental compliance issues.

This Consent Order supersedes and closes Consent Order No. 18-023 and the compliance schedule contained in OPDES Permit No. OK0100625.

FINDINGS OF FACT

1. Respondent owns and operates a publicly owned treatment works ("POTW") that serves the residents of Pittsburg County, Oklahoma. The POTW consists of wastewater collection lines, appurtenances, and a three-cell total retention lagoon wastewater treatment plant ("WWTP"). The WWTP is located in the NE¼, SE¼ Section 31, Township 9 North, Range 17 East of the Indian Meridian, Pittsburg County, Oklahoma. Upon completion of a new wastewater treatment system, the POTW will be authorized to discharge treated wastewater effluent to an unnamed tributary of Lake Eufaula pursuant to OPDES Permit No. OK0100625 ("Permit"), issued to the District by DEQ. The Permit became effective on December 1, 2017.

2. On April 2, 2018, DEQ and Respondent agreed to Consent Order 18-023, to establish a schedule to eliminate unpermitted discharges and operation and maintenance violations from the POTW. Respondent agreed to the following task schedule outlined in Consent Order 18-023:

TASK	DATE
A. Respondent agrees to take steps necessary to eliminate and prevent bypasses from the total retention lagoon system. If a bypass does occur, Respondent agrees to report to DEQ within twenty-four (24) hours of the occurrence by calling the hotline at 1-800-522-0206.	Immediately
B. Respondent agrees to continue recording the daily flow data along with daily rainfall totals and submit the data to DEQ by the 10 th day of each month.	Ongoing
C. Respondent agrees to begin conducting a sanitary sewer evaluation survey ("SSES") including the inspection of each manhole in the entire collection system.	May 1, 2018
D. Respondent agrees to complete the SSES of the entire collection system.	July 15, 2018
E. Respondent agrees to submit the findings/summary of the SSES along with the collection system map showing the location of each manhole, condition of each manhole along with pictures, and the location of any deficiencies found in the collection system.	August 15, 2018
F. Respondent agrees to repair/replace the synthetic liner in the lagoon system.	September 15, 2018
G. Respondent agrees to submit a schedule to DEQ to correct the deficiencies identified during the SSES to be used as a basis for an addendum to this Order.	September 15, 2018
H. Respondent agrees to submit an approvable engineering report in accordance with OAC 252:656 and the compliance schedule in the discharge permit, No. OK0100625 for the proposed wastewater treatment system.	June 1, 2018
I. Respondent agrees to submit approvable plans and specifications, an application for a construction permit, and the associated fees for the construction proposed in the approved engineering report in accordance with the compliance schedule in the discharge permit, No. OK0100625.	August 1, 2018

3. Part 1.B. of Respondent's OPDES Permit contains the following schedule of tasks for attaining compliance with the final effluent limits to ensure that the effluent discharged from the Respondent's WWTP meets the requirements of OAC 252:606, OPDES standards, Oklahoma Water Quality Standards and the Oklahoma Water Quality Management (208) Plan:

TASK	DATE
A. Submit to DEQ an approvable engineering report ("ER"), prepared by a Professional Engineer licensed to practice in the State of Oklahoma, for the new wastewater treatment system.	Six (6) months from the effective date of the permit. (June 1, 2018)
B. Submit to DEQ approvable plans and specifications ("P&S"), prepared by a Professional Engineer licensed to practice in the State of Oklahoma, an application for a construction permit, and the associated fee for the construction proposed in the approved engineering report.	Nine (9) months from the effective date of the permit. (September 1, 2018)
C. Begin construction with approved P&S	Fifteen (15) months from the effective date of the permit. (March 1, 2019)
D. Submit to DEQ an approvable Sludge Disposition Plan	Twenty-One (21) months from the effective date of the permit. (September 1, 2019)
E. Complete construction with approved P&S from Task B, and provide DEQ with written notification of completion.	Thirty (30) months from the effective date of the permit. (June 1, 2020)
F. Attain three (3) consecutive months of compliance with the OPDES Permit	Thirty Six (36) months from the effective date of the permit. (December 1, 2020)

4. On November 11, 2018, DEQ received the results of the SSES required by Consent Order 18-023, thus satisfying Tasks C, D, and E. As of the date of this Order, Respondent has not completed the remaining Tasks agreed to in Consent Order 18-023. Regarding the compliance schedule in the OPDES Permit, Respondent submitted an ER to DEQ on May 9, 2018. On July 12, 2018, DEQ issued a notice of deficiency for the ER submittal. As of the date of this Order, DEQ has not received a revised ER.

5. From May 22, 2017, through December 31, 2018, Respondent reported to DEQ orally and/or in writing the following unpermitted discharges, also known as "bypasses" or sanitary sewer overflows ("SSOs"), of untreated wastewater from the Respondent's wastewater collection system and WWTP. An asterisk identifies chronic SSO locations and a double asterisk identifies missing information as illustrated below.

DATE	DURATION (Hours)	LOCATION	VOLUME (Gallons)	CAUSE
5/22/2017	**	WWTP*	**	Rain
8/25/2017	**	WWTP*	**	Rain
3/7/2018	96	WWTP*	3,000,000	Rain
5/26/2018	4	Lift Station	5,000-10,000	Pump Failure

DATE	DURATION (Hours)	LOCATION	VOLUME (Gallons)	CAUSE
9/23/2018	**	WWTP*	**	Rain
12/31/2018	**	WWTP	**	Rain

6. On December 19, 2018, representatives for Respondent met with DEQ. During the meeting, it was discussed that Respondent was preparing an ER for constructing a mechanical wastewater treatment facility ("WWTF") and that the ER could be completed within a few months. It was further discussed that Respondent was currently negotiating with a contractor to correct the deficiencies identified in the submitted SSSES.

7. On January 17, 2019, Mr. Herrian spoke with Daryl Nieto, Chairman for Respondent, by telephone. Mr. Nieto was notified that DEQ would be offering Respondent this Consent Order to establish a schedule to eliminate unpermitted discharges from the WWTP and collection system. Mr. Nieto was notified of the penalty included in this Consent Order.

8. Failure to correct the violations stated above may result in harm to the environment and/or health and well-being of the affected public. By discharging without a permit the Authority cannot verify that Oklahoma's Water Quality Standards are being met. Failure to comply with the above-described rules allows untreated wastewater to enter the waters of the State, or elsewhere, which could result in oxygen depletion and subsequent injury, or death of aquatic organisms. Improperly or partially treated sewage can contain pathogens, or disease causing organisms, such as bacteria, viruses, and protozoa. Some of the common diseases that can be transmitted by sewage include bacterial diseases (E. coli poisoning, salmonellosis, shigellosis, typhoid, and bacterial dysentery); viral diseases (polio and hepatitis); and protozoal diseases (amoebic dysentery, cryptosporidiosis, and giardiasis).

9. Respondent and DEQ agree that it is beneficial to resolve this matter promptly and by agreement.

10. Respondent and DEQ waive the filing of a petition or other pleading, and Respondent waives the right to a hearing.

CONCLUSIONS OF LAW

11. DEQ has regulatory jurisdiction and authority in this matter, and Respondent is subject to the jurisdiction and authority of DEQ under 27A O.S. § 1-3-101(B), 27A O.S. §§ 2-6-201 through 2-6-206, and 27A O.S. §§ 2-6-401 through 2-6-403.

12. Respondent and DEQ are authorized by 75 O.S. § 309(E) and 27A O.S. § 2-3-506(B) to resolve this matter by agreement.

13. By allowing unpermitted discharges of untreated sewage to occur, Respondent violated 27A O.S. § 2-6-105(A), which states, “[i]t shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state. Any such action is hereby declared to be a public nuisance.”

14. By allowing unpermitted discharges of untreated sewage to occur, Respondent violated 27A O.S. § 2-6-205(A), which states, “it shall be unlawful for any facility, activity or entity regulated by the Department pursuant to the Oklahoma Pollutant Discharge Elimination System Act to discharge any pollutant into waters of the state or elsewhere without first obtaining a permit from the Executive Director.”

15. By failing to comply with the OPDES Permit compliance schedule, Respondent violated Part I(B) of OPDES Permit No. OK0100625, which contains a compliance schedule for submitting an ER for a new WWTF.

16. By failing to comply with the OPDES Permit compliance schedule, Respondent violated OAC 252:606-3-6 which states that “[a]pplicants must comply with the terms of the permits that are issued.”

ORDER

17. Based on the above paragraphs, Respondent and DEQ agree, and it is ordered by the Executive Director as follows:

	Task	Date Due
A.	Respondent agrees to continue recording the daily flow data along with daily rainfall totals and submit the data to DEQ by the 10 th day of each month.	Ongoing
B.	Submit approvable construction schedule for the repairs of the deficiencies identified in the SSES. This schedule may be used to amend this Order.	May 1, 2019
C.	Submit an approvable engineering report to DEQ prepared by a professional engineer licensed by the State of Oklahoma, for the new wastewater treatment system.	May 1, 2019
D.	Submit approvable plans and specifications (“P&S”) for the new wastewater treatment system, an application for a construction permit, and the associated fees. All proposed construction must comply with OAC 252:656.	August 1, 2019

	Task	Date Due
E.	Begin construction in accordance with the approved P&S from Task D and a DEQ-issued construction permit. All construction must comply with OAC 252:656.	February 1, 2020
F.	Complete all construction in accordance with approved P&S from Task D. All construction must comply with OAC 252:656.	October 1, 2020
G.	Submit approvable lagoon closure plan for the total retention lagoon system. This plan may be used to amend this Order.	October 1, 2020
H.	Attain three (3) consecutive months of compliance with the OPDES Permit	June 1, 2021

18. The Oklahoma Pollutant Discharge Elimination System Act, 27A O.S. §§ 2-6-201 through 2-6-206, authorizes DEQ to seek penalties of up to ten thousand dollars (\$10,000.00) per day of violation, for each day during which a violation of the Act, Permit, associated rules or order continues. Based on the facts and circumstances of this case, DEQ assesses a total penalty of sixty-two thousand eight hundred and seventy-five (\$62,875.00).

- a. Respondent agrees that, within ^{sixty}thirty (60) days of the effective date of this Consent Order, Respondent will pay thirty-nine thousand two hundred and seventy-five dollars (\$39,275.00) of the assessed penalty to DEQ.
- b. DEQ agrees to defer payment of the remaining amount of the assessed penalty pending compliance with the tasks listed in Paragraph 17 of this Consent Order.
 - i. If Respondent fails to complete a task by the scheduled due date, the portion of the deferred penalty allocated to that task in subparagraph (iii) becomes immediately due and payable.
 - ii. If Respondent completes a task by its due date, DEQ agrees to waive the portion of the deferred penalty allocated to that task in subparagraph (iii).
 - iii.

Task A	N/A
Task B	\$3,370.00
Task C	\$3,370.00
Task D	\$3,370.00
Task E	\$3,370.00
Task F	\$3,370.00
Task G	\$3,370.00
Task H	\$3,380.00

All penalty payments shall be by check or money order payable to the Oklahoma Department of Environmental Quality (or ODEQ), showing the Case Number of this Consent Order, and delivered to:

Accounts Receivable
Financial & Human Resources Management
Department of Environmental Quality
P.O. Box 2036
Oklahoma City, OK 73101-2036

19. Respondent agrees that if Respondent fails to complete any of the task(s) by the specified due dates set forth in Paragraph 17 in this Consent Order, DEQ may assess stipulated penalties as follows:

<u>TASK</u>	<u>PENALTY PER DAY</u>
A.	N/A
B.	\$105.00
C.	\$105.00
D.	\$105.00
E.	\$ 75.00
F.	\$110.00
G.	\$105.00
H.	\$150.00

Stipulated penalties begin to accrue on the day performance is due, with the total amount of stipulated penalties not to exceed thirty-five thousand dollars (\$35,000.00). If DEQ notifies Respondent that Respondent is not in compliance with this Consent Order and that stipulated penalties are being assessed, Respondent may request a hearing to contest the finding of noncompliance.

20. If Respondent fails to pay any penalty, DEQ may bring a separate action for collection of the penalty in District Court. An action by DEQ for the collection of a penalty does not affect Respondent's duty to complete the tasks required by this Consent Order.

GENERAL PROVISIONS

21. DEQ has received delegation from the United States Environmental Protection Agency to implement and enforce the Federal NPDES program. A portion of the implementation and enforcement program is to issue timely enforcement actions and impose appropriate penalties. The federal program calls for a significant increase in monetary penalties should this Consent Order be violated or future violations occur.

22. As used in this Consent Order, an "approvable" submission to DEQ is to be considered a final submission. That is, all preliminary discussions between DEQ and Respondent regarding the requirements of a submission must be concluded prior to the date the submission is due so that the submission will be approvable as submitted. If the submission is not submitted in an approvable form by its due date, the submission will be considered late and Respondent will be subject to the stipulated penalties described in this Consent Order.

23. Respondent agrees to perform the requirements of this Consent Order within the time frames specified unless performance is prevented or delayed by events which are a "force majeure." For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the reasonable control of Respondent or Respondent's contractors, subcontractors or laboratories that delays or prevents the performance of any obligation under this Consent Order. Examples are vandalism; fire; flood; labor disputes or strikes; weather conditions which prevent or seriously impair construction activities; civil disorder or unrest; and "acts of God." Force majeure events do *not* include increased costs of performance of the tasks agreed to in this Consent Order, or changed economic circumstances. Respondent must notify DEQ in writing within fifteen (15) days after Respondent knows or should have known of a force majeure event that is expected to cause a delay in achieving compliance with any requirement of this Consent Order. Failure to submit notification within fifteen (15) days waives the right to claim a force majeure.

24. Respondent and DEQ may amend this Consent Order by mutual consent. Such amendments must be in writing and the effective date of the amendments will be the date on which they are filed by DEQ. Any amendment to this Consent Order may require the payment of an administrative penalty.

25. Upon their approval by DEQ, any final reports, plans, specifications, schedules and attachments required under this Consent Order are incorporated into it and enforceable under it. Failure to respond within a reasonable time to any errors, deficiencies or other regulatory requirements identified by DEQ is a violation of this Consent Order.

26. No informal advice, guidance, suggestions or comments by employees of DEQ regarding reports, plans, specifications, schedules, and other writings affect Respondent's obligation to obtain written approval by DEQ, when required by this Consent Order.

27. Respondent agrees to allow agents of DEQ entry onto Respondent's property, at reasonable times and without advance notice, for the purposes of inspecting, sampling, testing, reviewing records and other authorized activities to assess compliance with Oklahoma statutes and rules and this Consent Order. If Respondent is required to sample or test, Respondent agrees to give DEQ reasonable notice of the sampling or testing date and time and allow DEQ to observe and/or split-sample.

28. Unless otherwise specified, any report, notice or other communication required under this Consent Order must be in writing and must be sent to:

For DEQ:

Travis Herrian, District Representative
Municipal Wastewater Enforcement Section
Water Quality Division
Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

For Respondent:

David Kimmel, Director of Operations
Carlton Landing Enterprises
29 Water Street
Carlton Landing, Oklahoma 74432

29. This Consent Order is enforceable as a final order of the Executive Director of DEQ. DEQ retains jurisdiction of this matter for the purposes of interpreting, implementing and enforcing the terms and conditions of this Consent Order and for the purpose of resolving disputes.

30. Nothing in this Consent Order limits DEQ's right to take enforcement action for violations discovered or occurring after the effective date of this Consent Order.

31. Nothing in this Consent Order excuses Respondent from its obligation to comply with all applicable federal, state and local statutes, rules and ordinances. Respondent and DEQ agree that the provisions of this Consent Order are considered severable, and if a court of competent jurisdiction finds any provisions to be unenforceable because they are inconsistent with state or federal law, the remaining provisions will remain in full effect.

32. The provisions of this Consent Order apply to and bind Respondent and DEQ and their officers, officials, directors, employees, agents, successors and assigns. No change in the ownership or corporate status of Respondent will affect Respondent's responsibilities under this Consent Order.

33. Compliance with the terms and conditions of this Consent Order fully satisfies Respondent's liability to DEQ for all items of noncompliance in this Consent Order. If Respondent satisfies the requirements of this Consent Order, DEQ will not pursue any other remedy, sanction or relief that might otherwise be available to address the issues of noncompliance in this Consent Order. Nothing in this Consent Order shall be deemed to satisfy Respondent's liability, if any, for actions or remedies not within the scope of authority of DEQ.

34. This Consent Order is for the purpose of settlement. Neither the fact that Respondent and DEQ have agreed to this Consent Order, nor the Findings of Fact and Conclusions of Law in it, shall be used for any purpose in any proceeding except the enforcement by Respondent and DEQ of this Consent Order and, if applicable, a future determination by DEQ of eligibility for licensing or permitting. As to others who are not parties to this Consent Order, nothing contained in this Consent Order is an admission by Respondent of the Findings of Fact or Conclusions of Law, and this Consent Order is not an admission by Respondent of liability for conditions at or near the facility and is not a waiver of any right, cause of action or defense Respondent otherwise has.

35. Respondent and DEQ agree that the venue of any action in district court for the purposes of interpreting, implementing and enforcing this Consent Order will be Oklahoma County, Oklahoma.

36. The requirements of this Consent Order will be considered satisfied and this Consent Order terminated when Respondent receives written notice from DEQ that Respondent has demonstrated that all the terms of the Consent Order have been completed to the satisfaction of DEQ, and that any assessed penalty has been paid.

37. The individuals signing this Consent Order certify that they are authorized to sign it and to legally bind the parties they represent.

38. This Consent Order becomes effective on the date of the later of the two signatures below.

**FOR PITTSBURG COUNTY RURAL
WATER DISTRICT #20**



**DARYL NIETO
CHAIRMAN**

3/19/19

DATE

**FOR OKLAHOMA DEPARTMENT
OF ENVIRONMENTAL QUALITY:**



**SCOTT A. THOMPSON
EXECUTIVE DIRECTOR**

3-21-19

DATE